**REMARKS**

In the Final Office Action mailed December 12, 2008, the Examiner notes that claims 7-17 are pending and rejects claims 7-17. Claim 8 and 17 are amended, no claims are canceled, no new claims are added; and, thus, in view of the foregoing claims 7-17 remain pending for reconsideration which is requested. No new matter is believed to have been added. The Examiner's rejections and objections are respectfully traversed below.

**Rejections under 35 U.S.C. § 103**

The Office Action, on page 2, in item 4, rejects claims 7-9 and 11-16 under 35 U.S.C. § 103(a) as being unpatentable over Screen Dumps of Macromedia Flash MX (hereinafter "Macromedia Flash") in view of Bernstein et al (U.S. Publication No. 2004/0093565, hereinafter "Bernstein") and further in view of Buxton et al. (U.S. Patent No. 6,094,197, hereinafter "Buxton") and Arita (U.S. Patent No. 5,821,926, hereinafter "Arita").

The Office Action, on page 3, when citing Buxton, refers to features of claim language which are not found in claim 8. Thus, Buxton is inapplicable to claim 8. The Office Action, on page 3, also admits that Macromedia Flash, Bernstein, and Buxton do not disclose "the graphic having target areas with target sizes of at least 2e where e is the distance error accuracy of an input device." However, the Office Action asserts that Arita discloses this feature.

Arita discusses operating buttons displayed on a display for selection by an input unit such as a keyboard, mouse, touch panel, or a pen. In particular, Arita notes that the buttons can be displayed on the display "with the display size of each individual button being varied between different button classes **on the basis of cumulative frequency of selections of the respective individual button**." (See Arita, column 10, lines 49-60, column 9, line 66 – column 10, line 4, column 26, lines 1-8). The Office Action, on page 11, in item 7, asserts that "with a larger target distance and size for target areas used with higher frequency, Arita's target area with target sizes 2 times larger than the norm would mitigate user's error or unintentional selection of items preferred or typically selected by the user via an input device" and further asserts that this is "consistent with the claim language" of claim 8. This is a mere assumption being made in hindsight and not found in Arita, specifically column 26, lines 4-8 cited by the Office Action.

In light of the above discussion, it is respectfully submitted that nothing cited or found in Arita teaches "the graphic has target areas with target sizes of **greater than 2e** where e is a distance error accuracy of an input device," as recited in claim 8 which is amended to clarify its

patentably distinguishing features.

However, the Applicant would like to reiterate and further explain an argument presented on page 4, line 31 - page 5, line 3 of the previous Response which was not addressed in the Office Action:

> Further, nowhere does Arita disclose, either expressly or implicitly, that "e is a distance error accuracy of an input device", as recited in claim 8. This is not surprising because the size of the button class described in Arita fails to relate to a "distance error accuracy of an input device", because the button class described in Arita merely relate to buttons used with high frequency.

It is respectfully submitted that Arita fails to disclose "target areas with target sizes of **greater than 2e where e is a distance error accuracy of an input device**" because "e is a distance error accuracy of an input device" and not related to "mitigating user's error or unintentional **selection of items preferred or typically selected by the user**" as asserted by the Office Action on page 11, in item 7. Arita does not indicate that the buttons related to "district" are twice as large as buttons related to "commodity" because of "distance error accuracy of an input device" but rather because the "district" buttons more commonly selected than the "commodity" buttons. The buttons discussed in Arita are each part of a button class and hierarchically coordinated. For instance, as depicted in Figure 26, the "district" button class is an upper level, and the "commodity" button class is a lower level in a hierarchy. However, the buttons could also be displayed in an opposite order, such that the "commodity" buttons are an upper level and display twice as large as the "district" lower level buttons because they are more commonly selected. (See Arita, column 11, lines 47-60). Arita does not teach target areas with target sizes of greater than 2e, and does not teach that e is a distance error accuracy of an input device. Thus, Arita, column 26, lines 1-8 does not disclose "target areas with target sizes of at greater than 2e where e is a distance error accuracy of an input device" because Arita's buttons are not based on a ratio related to the "distance error accuracy of an input device" but rather on selection frequency. This is not analogous with the claim language of claim 8.

In light of the above discussion, claim 8 patentably distinguishes over Arita, Macromedia Flash, Bernstein, and Buxton, taken alone or in combination.

Therefore, in view of the above, it is submitted that claim 8 is patentable over Macromedia Flash, Bernstein, Buxton, and Arita, as none of the references, taken alone or in combination, disclose, either explicitly or implicitly, the features quoted above.

It is submitted that claims 7, 9 and 11-16, which depend from claim 8, are also patentable over Macromedia Flash, Bernstein, Buxton, and Arita, for at least the same reasons as independent claim 8. Claim 14 recites "wherein a background layer has a text label." While the Office Action asserts that Macromedia Flash in Figure 4 teaches a "text label," the Office Action does not explain how one of ordinary skill in the art would have combined the references such that both text labels and hand drawn labels could be applied to different layers.

The Office Action, on pages 6-7, in item 5, rejects claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash in view of Bernstein, Buxton, and Arita and further in view of Tosey (U.S. Publication No. 2004/0125153). It is submitted that claim 10, which depends from independent claim 7, inherits the patentable features of independent claim 8. Further, nothing was found or cited in Tosey that cures the deficiencies of Macromedia Flash, Bernstein, Buxton, and Arita as discussed above with respect to claim 8. Therefore, it is submitted that claim 10 is patentable over Macromedia Flash, Bernstein, Buxton, Arita, and Tosey, taken alone or in combination.

The Office Action, on page 7, in item 6, rejects claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash in view of Bernstein, Buxton, Arita, and Tosey and further in view of Decoste et al. (U.S. Patent No. 6,317,142, hereinafter "Decoste").

Claim 17 is amended to clarify its patentably distinguishing features which are not taught by Macromedia Flash, Bernstein, Buxton, Arita, Tosey, and Decoste, taken alone or in combination: "wherein each of the controls has a target size of at **greater than 2e** where e is a distance error accuracy of an input device" (claim 17, lines 10-11). Nothing was found or cited in either Tosey or Decoste that cures the deficiencies of Macromedia Flash, Bernstein, Buxton, and Arita, as discussed above with respect to claim 8. Therefore, it is submitted that claim 17 is patentable over Macromedia Flash, Bernstein, Buxton, Arita, Tosey, and Decoste, for reasons similar to those discussed above with respect to claim 8.

Accordingly, withdrawal of the rejection is respectfully requested.

**Summary**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 3/12/9

By: /Randall Beckers/
Randall Beckers
Registration No. 30,358

1201 New York Avenue, N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501